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UNITED STATES DEPARTMENT OF AGRICULTURE
Food Distribution Administration
Washington, D. C.



January 13, 1943

DIRECTOR'S MEMORANDUM NO. 38

Procedure for Handling Marketing Agreements, Orders and Support Price Programs
In Connection With Cooperative Relationships Between
The Department of Agriculture and the Office of Price Administration.

Attached is a copy of a memorandum of understanding between the Department of Agriculture and the Office of Price Administration, approved by Director Byrnes, which outlines the procedure that has been agreed upon with respect to the handling of marketing agreements, orders, and support price programs. A copy of this memorandum is being furnished you for your guidance. The procedure set forth therein should be carefully observed.

With respect to marketing agreements and orders, the Branch originating such proceedings should notify the Office of Price Administration of the time and place of the hearing. This notice should be sent as soon as the hearing has been announced, and the letter to the Office of Price Administration should be signed personally by the Chief or Acting Chief of the Branch.

Attached are two forms of letters which should be sent to the Office of Price Administration in connection with milk marketing agreements and orders. Form A should be used in cases where a price increase is contemplated. Form B should be used in cases which do not contemplate price increases. This latter form really is not required under the memorandum of understanding, but because of the interest of the Office of Price Administration in milk marketing agreements, it should be used as a means of keeping that agency informed of changes in milk marketing agreements and orders. It is believed that few, if any, of the marketing agreements and orders for fruits and vegetables will directly affect price ceilings. Should changes be made in existing agreements or orders, or new agreements or orders be entered into, which might affect price ceilings, a variation of Form A letter should be used for keeping the Office of Price Administration informed.

If a price support program which might affect price ceilings is contemplated, a letter should be prepared by the appropriate Branch addressed to the Office of Price Administration. Such a letter should set forth the need for the support program and how it may affect the price ceiling.

The letters indicated above should be routed for signature by Mr. Kitchen as Acting Director. In his absence, I shall act on it. In the absence of both of us, it should be routed to whoever is designated as Acting Director at the time. The Office of Price Administration has not yet designated a representative, as contemplated by the memorandum of understanding. Until notice of such designation is received, the letters referred to above should be addressed to the head of the Office of Price Administration.

In the event that, at any time, disagreements arise with the Office of Price Administration which can be resolved only by submission to the Director of Economic Stabilization, a letter setting forth the circumstances should be prepared for the signature of the Secretary to Director Byrnes.

Letters to Director Byrnes, transmitting orders for his approval under the Agricultural Marketing Agreement Act, should state that there is agreement or disagreement on the part of the Office of Price Administration in all cases where price ceilings would be affected by the issuance of such orders. Such letters are to be prepared for the signature of the Secretary.

As you know, the President has, by letter, requested Director Byrnes to approve on behalf of the President marketing orders which are required to have Presidential approval under the terms of the Marketing Agreement Act. Accordingly, marketing orders which heretofore have been prepared for the approval of the President hereafter should be prepared for Director Byrnes' approval in the following manner:

"Secretary of Agriculture

"Approved: , 1943

Director of Economic Stabilization"

Marketing orders which are not required to have the approval of the President need not have the approving signature of Director Byrnes and need not be submitted to him at all except that, in the event of disagreement between the Department and the Office of Price Administration as to (1) whether the proposed order should issue despite its effect upon a price ceiling, or (2) assuming agreement that the order should issue, whether and to what extent adjustment of a price ceiling or some other action should be taken for the relief of handlers, the matter should be submitted to Director Byrnes for his determination.

In submitting to the Secretary dockets pertaining to marketing agreements or orders, it has been the practice of the Branch, in most cases, to prepare an explanatory memorandum to the Administrator and also a draft of memorandum of transmittal to the Secretary for the signature of the Administrator or Acting Administrator. Hereafter, the Branch should prepare an explanatory memorandum as heretofore, but it should be addressed to the Secretary and routed for signature to Mr. Kitchen as Acting Director or, in his absence to me, and in the absence of both of us, for the signature of whoever is designated Acting Director at the time.

Ray S. Henderson
Director

Attachments

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF AGRICULTURE
AND THE
OFFICE OF PRICE ADMINISTRATION
RELATIVE TO FARM AND FOOD PRICES

* * * *

In order to assure a close working relationship between the Department of Agriculture and the Office of Price Administration on all matters affecting farm and food prices, the following procedure is agreed to by both agencies:

1. The Office of Price Administration will secure the signature of the Secretary of Agriculture to all regulations which relate to the establishment of price ceilings on agricultural commodities, as provided in the Emergency Price Control Act of 1942, the Act of October 2, 1942 (Pub. Law 729, 77th Cong.), and Executive Order No. 9250, October 3, 1942.
2. The Office of Price Administration may consult with the technical staff of the Department of Agriculture with regard to proposed price ceilings on processed commodities. The Office of Price Administration will also notify a designated representative of the Secretary of Agriculture of any contemplated ceiling which the Price Administrator has reason to believe will directly and substantially affect the procurement, production, or subsidy operations of the Department of Agriculture. Unless the Secretary of Agriculture enters an objection, the Office of Price Administration may proceed as usual. If, however, the Secretary enters an objection to the issuance of the proposed ceiling, the matter shall be referred to the Economic Stabilization Director. If, on the other hand, the Office of Price Administration is of the opinion that there is no reason to believe that the contemplated ceiling will directly and substantially affect the procurement, production or subsidy operations of the Department of Agriculture, its docket shall contain a statement to that effect.
3. The Department of Agriculture may consult with the technical staff of the Office of Price Administration in connection with its marketing agreements, orders and support price program. The Department of Agriculture will also notify a designated representative of the Price Administrator of any contemplated agreement, order or support price program which it has reason to believe will require a price ceiling adjustment. Unless the Price Administrator enters an objection to the proposed action, the Department of Agriculture will proceed as usual. If the Price Administrator enters an objection to the proposed action, the matter shall be referred to the Economic Stabilization Director. If, on the other hand, the Department of Agriculture is of the opinion that there is no reason to believe that its proposed action will require a price ceiling adjustment, a statement to that effect shall be contained in the Department of Agriculture's docket. Whenever there is reason to believe a price ceiling adjustment will be required and

The Price Administrator nevertheless agrees to the proposed ceiling, the docket will contain a statement of such agreement.

4. All matters referred to in 1, 2 and 3 above will, insofar as practicable, be submitted by the initiating agency to the approving agency in sufficient time to permit the technical staff of the approving agency carefully to analyze such matters.
5. If any program referred to in 1, 2 or 3 will, in the opinion of the agency which initiates such program, necessitate a subsidy in order to maintain a then existing or contemplated price ceiling, the nature and amount of such subsidy will be agreed upon by the Secretary of Agriculture and the Price Administrator before the action necessitating the subsidy is taken. However, if the agency which initiates such program is of the opinion that the program must be put into effect promptly, it may proceed with such program, unless the other agency objects, in which case the matter shall be referred to the Economic Stabilization Director. All subsidy programs shall be approved by the Economic Stabilization Director before they become effective.
6. With respect to producers' prices for fluid milk, under the Agricultural Marketing Agreement Act of 1937, it is the duty of the Secretary of Agriculture only to fix producers' prices, and as a result, the Department does not receive detailed evidence of handlers' margins at hearings conducted under the Act. Milk producers' prices so fixed may directly and substantially affect price ceilings on wholesale and retail fluid milk and cream. Where this is so, the Department's hearings with respect to producers' prices may be followed immediately by hearings conducted by the Office of Price Administration for the purpose of determining the extent to which handlers' margins are affected and some form of action is required. The technical staff of the Department, insofar as practicable, will be available to assist in gathering information and in analyzing the evidence received at such OPA hearings. Before any change is announced in producers' prices under a Federal milk-marketing order, the Secretary and the Price Administrator will agree as to the effect of such order on handlers' margins and as to whether a subsidy, adjusted price ceilings or some other form of action is required.
7. Although every effort will be made by the Secretary and the Price Administrator to solve these problems jointly affecting their agencies without the necessity of reference to the Economic Stabilization Director, it is recognized that agreement may not always be possible. In case of disagreement, the Secretary and the Price Administrator will submit their views in writing to the Economic Stabilization Director, sending copies to each other. The decision of the Economic Stabilization Director with respect to such disagreement shall be final.

/s/ Claude R. Wickard
Secretary of Agriculture

/s/ Leon Henderson
Administrator, Office of Price
Administration

APPROVED:

/s/ James F. Byrnes

James F. Byrnes, Director,
Office of Economic Stabilization

December 11, 1942

Date

Form A

Mr. _____, Administrator
Office of Price Administration
Washington, D.C.

Dear Mr. _____:

We are transmitting with this letter a copy of the Administrator's Report with respect to amendments to the order regulating the handling of milk in the _____ marketing area. This report is for your consideration in accordance with the memorandum of understanding between the Secretary of Agriculture and the Price Administrator, approved Dec. 11, 1942. The report has been prepared following public hearings held in _____ on _____, 1943, notice of which was previously sent to you.

The net effect of the proposed amendments will be to increase the Class I price by _____ cents per hundredweight, or approximately _____ cents per quart. Evidence introduced at the hearing, including particularly the trend of receipts in the market, recent changes in cost factors, and recent changes in competitive prices, appeared to justify fully this change in price as a necessary aid to the maintenance of supplies for the _____ market.

The net cost prices to milk handlers for other fluid products subject to price ceilings are also increased by these amendments by approximately the following amounts: fluid cream, _____ cents per hundredweight of milk; buttermilk, flavored drinks, and skim milk, _____ cents per hundredweight of skim milk; ice cream, _____ cents per hundredweight of milk. These suggested changes are based on the factors mentioned above.

Other amendments proposed are in the nature of needed changes in the administrative provisions or in the provisions relating to the method of distributing returns to producers, and do not, of course, affect the price ceilings imposed by your office.

We shall appreciate having any comments you may care to make regarding these proposed price changes, particularly with respect to their effect upon prices ceilings. We shall be glad to work with representatives of your office in preparing recommendations as to the kind and amount of relief, if any, which should be accorded handlers as a result of these changes.

These proposed amendments are being submitted to the industry for the filing of exceptions to be submitted to this Administration not later than _____. Following our analysis of such exceptions, we plan to submit to Director Byrnes, for his approval, a draft of an order, together with any comments or suggestions you may submit to us, regarding the terms of such order and the joint or separate recommendations of this Department and your Administration, if required, for the relief of handlers subject to the order.

Please feel free to call on us if further information is desired.

Sincerely yours,

Form B

Mr. _____, Administrator
Office of Price Administration

Dear Mr. _____ :

This is to notify you of the completion of our preliminary analysis of evidence received at a public hearing on _____ with respect to proposed amendments to the order regulating the handling of milk in the _____ marketing area. An Administrator's Report is being prepared, and will be published, containing the results of this analysis and proposing certain amendments.

Inasmuch as the net effect of the proposed amendments on the cost prices of handlers is negligible, and therefore will not substantially or directly affect the price ceilings imposed by your office, it has not been deemed necessary to request your consideration of or concurrence in these amendments. This is in accordance with the memorandum of understanding between the Secretary of Agriculture and the Price Administrator, approved December 11, 1942.

The principal changes sought by these amendments are improvements in the administrative provisions and improvements in the methods of distributing the proceeds of sale among producers. The seasonal decline in dealers cost prices for Class I and Class II milk has been eliminated, but inasmuch as your ceilings were imposed during months when such prices were at their seasonal high, this change should not affect the ceilings.

In line with established procedure, this report will be filed for exceptions, issued as a tentative order or agreement, and then, following approval, issued as an amended order or agreement.

Please feel free to call on us if further information is desired.

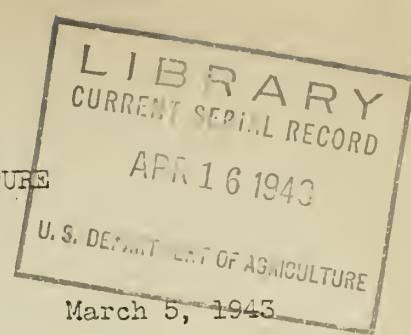
Sincerely yours,

Acting Director

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UNITED STATES DEPARTMENT OF AGRICULTURE
Food Distribution Administration
Washington, D. C.



DIRECTOR'S MEMORANDUM NO. 38

Supplement 1

Relations with OPA on Price Ceiling Problems

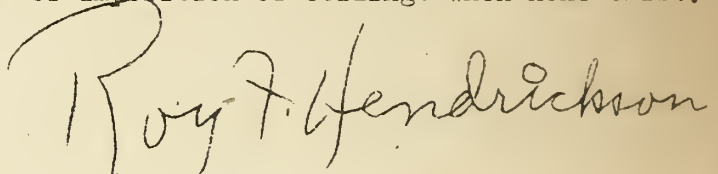
In order to provide a focal point in FDA on OPA price ceilings and kindred price problems and thereby improve our system of contact and relations with OPA as well as agencies within the Department, including the Office of the Secretary, I have assigned responsibility for all relationships on price problems to Si Smith in his capacity as Assistant Deputy Director. He will work closely with O. V. Wells of BAE, Mr. Bledsoe, Assistant to the Secretary, who is designated as the official representative of the Department in relations with OPA, and Sherman Johnson of Food Production Administration in coordination of the Department's views on price ceiling problems. Each commodity branch chief should notify Mr. Smith at once of the person or persons he should work with and to whom he should refer ceiling price problems on commodities handled in the branch.

The OPA has distinct jurisdiction over the fixing of price ceilings for agricultural commodities and the enforcement of price regulations. Nevertheless, FDA has a large responsibility in connection with the formulation of price regulations applicable to the various stages in the marketing of farm products and we must discharge this responsibility with vigor and full appreciation of the importance of the job to be done. Each stage in the distribution process, from farmer to processors, and on to the ultimate consumer is an integral part of the problem of price control, and any tendency to underemphasize one or more of these stages can lead to difficulties which seriously affect food processing and distribution.

The knowledge and experience of FDA as well as its facilities for assembling and analyzing facts regarding the organization and functioning of the distributive system and the relation of that system to production and processing of agricultural commodities must be brought to bear on the problem. Distribution-control programs and price control require smooth coordination to avoid adverse repercussion on food production and processing. We must anticipate their functioning and the possible problems - our job will always remain too undone if we wait to see what will happen. We must anticipate and act - act to meet the problem effectively, both in point of time and the solution to be applied. This will tax our ingenuity at every turn. Past experience in many instances will not provide a guide. New courses of action will be required to do the job.

Our responsibility cannot be effectively carried out unless specialists in the commodity branches are given sufficient time to study and review proposed price regulations or changes. Every effort must be made to assure a reasonable period of time for consideration of such proposals. Commodity branch chiefs and their specialists should continue the practice of working with the OPA staff on price-ceiling problems and the development of regulations. In pursuing these activities the commodity branch chief, or his designated representative, should make it a point to keep Mr. Smith informed on the problems being considered with OPA, progress being made, and whether any formal action on the part of FDA or the Department will be involved.

Once a price regulation is in effect, and the study of its actual application reveals needed changes or adjustments, the commodity branch concerned should notify Mr. Smith, so that the findings can be discussed with the other Department agency representatives, and appropriate action carried out. The same procedure should be followed in presenting proposals for imposition of ceilings when none exist.


Director